REMARKS

I. Introduction

With the cancellation without prejudice of claims 29 to 32, claims 16 to 28 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants note with appreciation the acknowledgment of the claim for foreign priority and the indication that all certified copies of the priority documents have been received.

Applicants respectfully request an acknowledgement that the previously filed Information Disclosure Statements, PTO-1449 papers and cited references have been considered in the next communication from the Office.

II. Objection to Claim 23

As regards the objection to claim 23, while it is respectfully submitted that claim 23 is readily understandable, the Examiner will note that claim 23 has been amended, as requested, to render claim 23 even more readily understandable. Withdrawal of this objection is respectfully requested.

III. Rejections Under 35 U.S.C. §§ 102 and 103

Claims 16 to 20, 23 and 24 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,604,380 ("Nishimura et al."). Claims 21, 22 and 25 to 28 were rejected under 35 U.S.C. § 103(a) as unpatentable over Nishimura et al. It is respectfully submitted that these rejections should be withdrawn for at least the following reasons.

To anticipate a claim, the reference must disclose each and every element of the claimed invention. *Verdergaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 2 USPQ2d 1051 (Fed. Cir. 1987).

In order for a claim to be rejected for obviousness under 35 U.S.C. § 103(a), not only must the prior art teach or suggest each element of the claim, but the prior art must also suggest combining the elements in the manner contemplated by the claim. *See Northern Telecom, Inc. v. Datapoint Corp.*, 908 F. 2d 931, 934 (Fed. Cir. 1990), *cert. denied* 111 S.Ct. 296 (1990); *In re Bond*, 910 F. 2d 831, 834 (Fed. Cir. 1990). The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *See* M.P.E.P. §2142. To establish a *prima facie* case of obviousness, the Examiner must show, *inter alia*, that there is some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of

ordinary skill in the art, to modify or combine the references and that, when so modified or combined, the prior art teaches or suggests all of the claim limitations. *See* M.P.E.P. §2143. Applicant respectfully submits that a *prima facie* case of obviousness has not been established.

Amended claim 16 recites, *inter alia*, an etching layer, whereby the etching layer is a silicon layer. Support for this amendment may be found, *e.g.*, on page 3, line 32 to page 4, line 2 of the Specification. In Nishimura et al., it is neither provided nor necessary to use silicon substrate 1 as an etching layer. *See* Figure 2 (d). Thus, Nishimura et al. do not disclose, or even suggest, at least the aforementioned feature of amended claim 16. Accordingly, amended claim 16 is patentable over Nishimura et al.

As for claims 17 to 28, which ultimately depend from claim 16 and therefore include all of the features recited in claim 16, it is respectfully submitted that these claims are patentable over Nishimura et al. for at least the same reasons more fully set forth above in support of the patentability of claim 16.

As further regards claims 27 and 28, the characterization of these claims as so-called "product-by-process" claims is not necessarily agreed with.

Accordingly, Applicants respectfully submit that all rejections raised under 35 U.S.C. §§ 102 and 103 should be withdrawn.

IV. Conclusion

In light of the foregoing, it is respectfully submitted that all of the presently pending claims are in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

Respectfully submitted,
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